



POLICE DEPARTMENT CITY OF NEW YORK

June 30, 2017

MEMORANDUM FOR: Police Commissioner

Re: Detective Darrel O'Neill
Tax Registry No. 939149
Missing Persons Squad
Disciplinary Case No. 2015-13932

Detective Christopher Vanweddinger
Tax Registry No. 919808
Narcotics Borough Manhattan North
Disciplinary Case No. 2015-13933

Charges and Specifications:

Disciplinary Case No. 2015-13932

1. Said Detective DARREL O'NEILL, on or about September 2, 2014, at approximately 1855 hours, while assigned to Narcotics Borough Manhattan North and on duty, in the vicinity of West 136th Street and Amsterdam Avenue, New York County, abused his authority as a member of the New York City Police Department, in that he stopped a car that Person A was driving, without sufficient legal authority. *(As Amended)*
P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK
2. Said Detective DARREL O'NEILL, on or about September 2, 2014, at approximately 1855 hours, while assigned to Narcotics Borough Manhattan North and on duty, in the vicinity of West 136th Street and Amsterdam Avenue, New York County, abused his authority as a member of the New York City Police Department, in that he threatened to seize property possessed by Person A, to wit: Person A's black BMW motor vehicle, without sufficient legal authority. *(As Amended)*
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
3. Said Detective DARREL O'NEILL, on or about September 2, 2014, at approximately 1855 hours, while assigned to Narcotics Borough Manhattan North and on duty, in the vicinity of West 136th Street and Amsterdam Avenue, New York County, engaged in a rude act, in that he grabbed a slice of pizza from Person A's hand and threw it onto the floor of his car, without police necessity. *(As Amended)*
P.G. 203-10, Page 1, Paragraph 1 – PUBLIC CONTACT – PROHIBITED CONDUCT

- 4 Said Detective DARREL O'NEILL, on or about September 2, 2014, at approximately 1855 hours, while assigned to Narcotics Borough Manhattan North and on duty, in the vicinity of West 136th Street and Amsterdam Avenue, New York County, spoke discourteously to Person A in that he stated, in sum and substance: YOU ARE A FUCKING ASSHOLE; I CAN TAKE YOUR FUCKING CAR. *(As Amended)*
P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT - GENERAL

Disciplinary Case No. 2015-13933

1. Said Detective CHRISTOPHER VANWEDDINGER, on or about September 2, 2014, at approximately 1855 hours, while assigned to Narcotics Borough Manhattan North and on duty, in the vicinity of West 136th Street and Amsterdam Avenue, New York County, abused his authority as a member of the New York City Police Department, in that he stopped a car that Person A was driving, without sufficient legal authority. *(As Amended)*
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2. Said Detective CHRISTOPHER VANWEDDINGER, on or about September 2, 2014, at approximately 1855 hours, while assigned to Narcotics Borough Manhattan North and on duty, in the vicinity of West 136th Street and Amsterdam Avenue, New York County, abused his authority as a member of the New York City Police Department, in that he threatened to seize property possessed by Person A, to wit: Person A's black BMW motor vehicle, without sufficient legal authority. *(As Amended)*
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P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT - GENERAL

Appearances:

For CCRB-APU: Suzanne O'Hare, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondents: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

Hearing Date:

March 22, 2017

Decision:
Respondents are found Not Guilty

Trial Commissioner:
ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on March 22, 2017. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB administrative prosecutor called CCRB Trial Preparation Assistant Helen Pressberg as a witness and offered the out-of-court statements of Person A and Person B. Each Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Person A,¹ at an in-person, recorded interview conducted at CCRB on September 16, 2014 (CCRB Ex. 1), stated that on September 2, 2014, at about 1855 hours, he was driving his black BMW at a speed of between five to ten miles per hour on 136th Street between Broadway and Amsterdam Avenue, in Manhattan. Two passengers were in the car with him. In the front passenger seat was Person A's friend Person B and in the rear seat was a woman named Person C. Person A had just purchased a slice of pizza at a shop on 137th Street and Amsterdam Avenue. Person A encountered "a couple double-parked cars," so he had to "swerve through traffic" cautiously. (p. 3). As he did so, the driver of a navy blue van that was behind his

¹ A transcript of Person A's CCRB interview was offered by the CCRB administrative prosecutor as hearsay evidence after he did not comply with a subpoena that was served on him to appear to testify at this trial.

BMW started continuously beeping his horn. Person A stopped his BMW and stated to get out of his car. As Person A took off his seat belt, he looked into his rearview mirror and saw a man exiting the van and walking toward him. He described the man as a “[s]hort white guy, bald head, maybe about 5' 1”, real short, Napoleon type” weighing “between 140 and 150 pounds, and in his mid-40’s.” (p. 16, 30). Person A described the other man as a “white guy, almost like an Italian type,” in his mid-30’s, wearing plainclothes, with dark hair and a mustache, around 6’ 1” tall, and weighing approximately 220 pounds. (p. 28).

The man then opened Person A’s door fully, grabbed him by the throat using his right hand, and started choking him. Person A clarified that the man did not have his hand all the way around his throat, but was instead “clutching the larynx itself” for “about 10 seconds.” (p. 18). His breathing was restricted for “about four to five seconds.” (p. 19). Person A stated that as he tried to pull his neck back, the man grabbed the slice of pizza that was in Person A’s left hand and threw it down onto the floor of the car. Later during the interview, he stated that when the man released his hand from Person A’s neck, the man grabbed the pizza and threw it down by Person A’s leg, while calling him a “fucking asshole.” (p. 24). The man and his partner told Person A, “It could be an emergency” and “We can take your fucking car.” (p. 27).

The other man, who Person A determined was a police officer because his shield was displayed, stood on the passenger side of the car. Person A noticed a crowd of about six or seven people form at one point. The man released Person A’s neck, called him an “asshole” again and walked back to his van. Person A then drove to the corner, where he pulled over and took down the van’s license plate number as it drove past. Afterwards, Person A drove to the 26 Precinct, where he again saw the man. About 30 minutes after this incident, Person B drove Person A to

[REDACTED] hospital where an MRI was performed on his neck, back, and shoulders. He was prescribed ibuprofen and sent home.

Person B,² at an in-person, recorded interview conducted at CCRB on October 6, 2014 (CCRB Ex. 2), stated that on September 2, 2014, at about 1855 hours, he was a passenger inside Person A's BMW. A woman was also in the car but Person B did not know her. As Person A was driving on 136th Street between Broadway and Amsterdam Avenue, two cars ahead of them were blocking the street, causing Person A to have to wait for the cars to move out of the way before he could continue driving. Shortly after both cars moved out of the way and Person A started driving forward, Person B heard a loud horn beeping excessively for "at least a minute" from behind them. Person A stopped the car and two men exited the blue van behind them and approached Person A's car on either side. (p. 10). Neither Person B nor Person A knew that the two men were police officers and as a result, they were "trying to get out of the car to find out what was going on." (p. 13). However, before they had a chance to do so, the officers "rushed the car" and the man pulled Person A's door open. (p. 13). The officer that approached Person B's side was a white male wearing plainclothes, between 5'6" and 6'0" tall displaying a gold shield. He told Person B not to move and told him that they would take his car. Person B described the man as a stocky white male in his mid-40's, around 6'0" tall.

As Person A began opening his door, the man pulled it open completely, and said "move the fucking car or we're going to take the fucking car." The man also grabbed the pizza from Person A's hand and "mashed it" on the floor of the car with his foot. (p. 24). In response, Person B asked --on what grounds I want to see you take the car Now you can 'l just take my car (p. 25) The officers also repeatedly asked who the car belonged to According to Person B, Person A

² A transcript of Person B's CCRB interview was offered by the CCRB administrative prosecutor as hearsay evidence after he failed to appear to testify at this trial despite having been served with a subpoena.

started laughing and the man "started going crazy" (p. 27). The man then grabbed the back of Person A's neck with his right hand and started choking him. Person A began coughing and "could barely talk" due to the pressure the man was exerting on his throat. The man forced Person A's neck down the steering wheel and then released him. The man's partner then said, "come on we got to go" and they both walked back to their van. (p. 34). Person A then drove to the 26 Precinct. As he was entering the precinct, the man walked past Person A, tapped him on the shoulder and said, "Do what you got to fucking do." (p. 36). After leaving the 26 Precinct. Person B drove Person A to [REDACTED] to [REDACTED] Hospital.

Respondents' attorney offered in evidence the transcript of a recorded CCRB telephone interview of Person A that was conducted on September 8, 2014. (Resp. Ex. A) During this telephone interview, Person A stated that on September 2, 2014, between 1900 and 2000 hours, he was driving east on 136th Street in Manhattan with his friend Person B. Person A described the street as having a lot of double-parked cars, making it difficult to drive down. Person A stated that an unmarked van began to continuously beep at him from behind. Person A stated that he stopped driving and had opened the driver's side door slightly when a "short, white guy, bald head, shaved face..." wearing a blue T-shirt and shorts "pulled the door open, grabbed [him] by the throat...and pulled [him] out of [his] car. (p. 6-7). Person A stated that the man did not identify himself. This man grabbed and squeezed his Adam's apple, constricting his breathing. Person A was holding a slice of pizza in one of his hands. The man grabbed the slice and threw at him while using profane language. When Person A asked the man why he had grabbed him, the man said to him, "You're an asshole, you know, it could be an emergency." (p. 5). The other man, who identified himself as a police officer, was standing on the passenger side of the car speaking to Person B. Person A described the other man as Caucasian with black hair, taller than the

other man and wearing plainclothes. The man told them " shut-up or we'll take your vehicle." (p. 11). Person A was then allowed to drive away without having received a summons. Person A went to the 26 Precinct to file a complaint. As Person A was entering the precinct, he saw the man exiting. The man tapped Person A on the back as he walked past and said, "Do what you got to do." (p. 5). Person A later went to Columbia Presbyterian Hospital complaining of throat, shoulder, and back pain. Person A acknowledged that he had retained an attorney and that he intended to file a civil lawsuit. Person A stated later during this interview that the man did not actually remove him from his car, but was attempting to do so.

CCRB Trial Preparation Assistant Helen Pressberg testified that Stanislav Sazonov was the CCRB investigator who was assigned to investigate Person A's complaint but that Sazonov is no longer employed by CCRB. Pressberg testified that she reviewed CCRB's database regarding this investigation and that she retrieved documents that had been scanned into the CCRB's case tracking system by Sazonov.

Pressberg retrieved an entry Sergeant Corsello entered into the Command Log at the 26 Precinct at 1904 hours on September 2, 2014, which states:

C/V Person A, [REDACTED] stating an unknown officer in plainclothes in an unmarked Blue van did Blow Their horn at him then proceeded to get out, choke c/v from his driver side window and throw c/v's food at him. C/V did not want medical attention. stated not injured. Sgt. Corsello observed no markings on c/v's neck area. Asked several times if c/v needed medical attention, to which he declined. C/V was calm. Witness present - Person B. Civ. Comp. Report (CCRB 4) prepared (PD313-154). Fw did as required. C/V also given CCRB telephone number to make complaint via telephone. "Buff copy of complaint given to c/v. C/V did not appear under the influence or drugs/Alc. Mental conduct.

Pressberg also retrieved the Civilian Complaint Report that Sergeant Corsello prepared on September 2, 2014 (CCRB Ex. 4) [The section of the report where the vehicle number of the officer would be entered is blank. Person A signed this report as the complainant.]

Pressberg also retrieved an Internal Affairs Bureau (IAB) Case Information System Worksheet – Internal Affairs Log prepared by Police Officer Pedro Pena, dated September 2, 2014 (CCRB Ex. 8) which states:

At 2031 hours ... Reporter Sgt. Corsello, Tax #947731 called the Command Center in order to report the following: Sgt. Corsello states that Person A [REDACTED] walked into the 26th Precinct in order to make a Civilian Complaint that an alleged blue unmarked police van (no lights/sirens/plate number) pulled up behind him blowing a regular van horn. As a result, Person A states he stopped his vehicle and an alleged plainclothes officer stepped out the van, opened Person A's driverside door and proceeded to choke him; afterwards, took the food that was in his hand and threw it at him. When asked by Sgt. Corsello how did he know that the unknown man was an officer Person A stated that another individual at the scene displayed a shield but never clarified what type, size, color, number or shape the shield was. Sgt. Corsello also stated that he offered Person A medical attention which Person A refused. At 2120 hours: I contacted Person A who confirms the incident described by Sgt. Corsello above but also gives additional information. Person A further states that there were two witnesses in his car at the time of the incident Person B [REDACTED], Person C and also attained a license plate [REDACTED] of the unmarked van. Person A stated that the unidentified officer used offensive language, squeezed his wind pipe, and took the pizza he had out of his hand and threw it at him; he also states that when he arrived at the 26 Precinct in order to make the complaint, the unidentified officer was at the precinct and patted Person A on the back and said "do what you have to do, we could've taken your fucking car." Person A drove himself to Columbia-Presbyterian Hospital but does not have an official diagnosis or doctor's name at this time.

Pressberg also retrieved NBMN's Unmarked Vehicle Utilization Record for a "Blue Ford" "PVAN" bearing license plate number [REDACTED] which shows that the van bearing this plate number was assigned to Respondents on September 2, 2014 (CCRB Ex. 3).

Pressberg also retrieved the 30 Precinct Command Log for September 2, 2014 (CCRB Ex. 5) which shows that the prisoner van for NBMN logged in two new arrest prisoners at 1910 hours. Pressberg also retrieved a CCRB report prepared by CCRB investigator Stanislav Sazonov which states that:

On March 18, 2015, Person A viewed the two photo arrays, A1 and B1, and picked the officer number two from array A1. The officer Person A picked corresponds to the NYPD MOS photo of Det. Darrell O'Neill from Manhattan North Narcotics. Person A picked the officer number four from array B1, which corresponds to the NYPD MOS photo of PO Christopher Vanweddinger from Manhattan North Narcotics. However, Person A did not

DETECTIVE DARREL O'NEILL
DETECTIVE CHRISTOPHER VANWEDDINGER

sign off on PO Vanweddinger's photo because he was not certain that he was the second officer involved in the incident.

Presberg testified that on December 15, 2016, she met Person A at a Boson Market restaurant in Manhattan and showed him the photo array containing a photograph of Respondent O'Neill (CCRB Ex. 6) that had been shown to Person A by Sazonov on March 18, 2015. Person A told Presberg that he recognized the photo array as the same array that had been shown to him by Sazonov on March 18, 2015.

The parties stipulated that if Detective Philip Torres had testified at this trial he would have stated that he was assigned as the vehicle coordinator for NBMN during September, 2014, and that the command did not have a prisoner van which had tinted windows.

Both Respondents testified that they were on duty on September 2, 2014, between 1900 and 2000 hours, in plainclothes, assigned to the NBMN prisoner van, but they denied that they had stopped any car or had any interaction with Person A or Person B on September 2, 2014.

Analysis

Since both Respondents have consistently denied that they had any interaction with Person A or Person B on September 2, 2014, the determination of these charges hinges on whether the allegations made by Person A and Person B, which were offered as hearsay at this trial, constitute credible evidence sufficient to meet the CCRB administrative prosecutor's burden of proof, and on whether the CCRB administrative prosecutor sufficiently proved that Respondents were the two male plainclothes officers who Person A asserted stopped his car, threatened to seize his car, and cursed at him.

Although hearsay is admissible at Department disciplinary trials and may form the sole basis for making findings of fact,³ even where hearsay testimony is supported by circumstantial

³ RCNY Title 38, 15-04(e)(1).

evidence it may be insufficient to support a finding of guilt in a disciplinary trial.⁴ As the United States Supreme Court has noted that, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine adverse witnesses."⁵

Although during their respective in-person interviews at CCRB, Person A and Person B offered, as the CCRB administrative prosecutor described it, "remarkably similar tales," (Tr. 107) since Person A and Person B did not appear to testify at this trial, Respondents' attorney did not have the opportunity to question them about whether prior to their CCRB interviews they had discussed this incident and compared, and possibly adjusted, their personal recollections as to what took place on September 2, 2014. Also, with regard to the credibility of Person A, it must be noted that although Person A told everyone who interviewed him about this incident that he was grabbed by the neck and choked during this incident, and even though Person B corroborated Person A's claim that he was grabbed on his neck, CCRB chose not to substantiate this claim. The CCRB administrative prosecutor argued that the CCRB Board's determination that Person A's choking allegation was unsubstantiated did not constitute a finding that Person A's and Person B's statements were lies. Nonetheless, the fact remains that CCRB determined that the most serious allegation made by Person A and Person B should be not be substantiated.

With regard to the identification evidence presented at this trial, the facts here are similar to some of the facts presented in *People v. Delamota*,⁶ where the Chief Judge of the New York Court of Appeals found that "(t)here were serious problems with the identification in this case from the time the" incident "was first reported..." In that case, a 911 caller did not report

⁴ Eppler v. Van Alstyne, 93 AD2d 930, 462 NYS2d 320, 1983 NY App Div LEXIS 17824.

⁵ Goldberg v. Kelly, 397 US 254, 269.

⁶ 18 NY3d 107; 936 NYS2d 614; 2011 NY LEXIS 3250.

information he possessed regarding the identity of the perpetrator. Here, I find that Person A did not report to Sergeant Corsello the license plate number of the van, information which he supposedly possessed at the time he spoke to Sergeant Corsello.

Sergeant Corsello's log entry at 1904 hours regarding his conversation with Person A (CCRB Ex. 9), the Civilian Complaint Report he prepared (CCRB Ex. 4), and his report to IAB at 2031 hours regarding the information Person A provided to him (CCRB Ex. 8) are all very detailed. The fact that Sergeant Corsello did not enter a license plate number in his log entry, or on the Civilian Complaint Report he prepared that Person A signed (CCRB Ex. 4), or in his verbal report to IAB (CCRB Ex. 8), constitutes evidence that Person A did not provide a license plate number to Sergeant Corsello. This raises the suspicion that Person A did not actually have a license plate number at the time he spoke to Sergeant Corsello.

The CCRB administrative prosecutor argued that the reason that Person A failed to provide this important information to Sergeant Corsello was because "this was a very upsetting event" to Person A and because "there was adrenaline flowing through him and he had just seen this officer again." (Tr. 110). However, in the absence of testimony by Person A to this effect, this argument is speculative and not convincing. Moreover, Person A also did not report to Sergeant Corsello that he had just seen the officer he was there to make a complaint against walk out of the stationhouse and tell him "Do what you gotta do." The CCRB administrative prosecutor argued that the reason that Person A and Person B failed to mention this important fact to Sergeant Corsello was because "both of these parties were clearly upset and were not able to give a fuller description." (Tr. 113) Again, absent testimony by Person A and Person B to this effect, this argument is not convincing, nor is the argument that Person A was able to provide a license plate number to IAB at 2120 hours because he was now "calmer" and "had less adrenaline in his

system." (Tr. 113) I find it significant that the IAB Log prepared by Police Officer Pena (CCRB Ex. 8) regarding his telephone conversation with Person A at 2120 hours states that Person A provided "additional information" by offering Pena a license plate number and by asserting that he had seen the officer at the stationhouse. Since Pena did not write that Person A had asserted that he had already provided this information to Sergeant Corsello, Pena's entry constitutes evidence that Person A did not make this claim.

The combination of Person A's failure to provide the license plate number of the van to Sergeant Corsello and his failure to tell Corsello that he had just seen the officer he was filing a complaint against inside the stationhouse, leads to the suspicion that Person A did not obtain a license plate number at the scene of the incident, as he claimed he did, but that he obtained a plate number sometime after he spoke to Sergeant Corsello at 1904 hours and before he spoke to Officer Pena at 2120 hours.

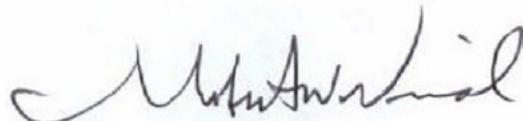
Also, the CCRB administrative prosecutor acknowledged that both Person A and Person B made assertions that were "clearly...in error." The CCRB administrative prosecutor acknowledged that Person A's description of Respondent O'Neill as a "short white guy...maybe about 5'1", real short, Napoleon type," was "incorrect" since Respondent O'Neill is tall, and that Person B's statement that the windows on the van were tinted was "in error."

Finally, with regard to the photo arrays placed in evidence by the CCRB administrative prosecutor (CCRB Ex. 6 & 7), these photo arrays were shown to Person A on March 18, 2015, over six months after Person A's brief encounter on September 2, 2014. Also, Respondents' attorney did not have the opportunity to cross-examine Stanislav Sazonov, the CCRB investigator who initially showed the photo arrays containing Respondents' photos to Person A. That Respondents' attorney was unable to question Sazonov about what he said to Person A

before he showed him the array containing the photo of Respondent O'Neill (CCRB Ex. 6) is significant because, as the Chief Judge of the Court of Appeals noted in the *Delamota* decision, even where the composition of photos in an array are not suggestive, the manner in which an array is shown to a complainant and what is said to the complainant before and during the showing can affect whether or not an identification is made. Since the CCRB administrative prosecutor offered no evidence that CCRB investigator Sazonov was provided with a script delineating what he should and should not say to a complainant who is viewing photo arrays, the accuracy of Person A's identification of Respondent O'Neill's photo is open to question.

Based on the above analysis, I find that on this record, the CCRB administrative prosecutor did not meet her burden of presenting credible evidence which proves these charges by a preponderance of the credible evidence. Therefore, Respondents are found not guilty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

NOV 01 2017

JAMES P. O'NEILL
POLICE COMMISSIONER